

PRIVACY MATTERS

Personal Privacy Information

APPROVAL/TRANSMITTAL

This section provides policy and procedures for collecting and maintaining personal privacy information and the handling of requests for personal privacy information made pursuant to the Privacy Act of 1974 (5 U.S.C. § 552a) except for those relating to computer matching. The policy and procedures for Computer Matching programs are provided in IG-1425.

This change is updated to add a section on guidance concerning restriction on release of agency documents and information to an employee's private counsel or other representative (see section E1e). This supersedes Staff Memorandum No. M-98-4-1421, dated December 12, 1997, and IG-1421 dated March 15, 1999. Remove and destroy previous editions.

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ROGER C. VIADERO  
Inspector General

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A. BACKGROUND. The Privacy Act, 5 U.S.C. § 552a, protects citizens of the United States or aliens lawfully admitted for permanent residence by limiting the collection of personal privacy information to that which is legally authorized and necessary. The Act also requires personal privacy information to be maintained in a manner that precludes an unwarranted intrusion upon individual privacy.

The Act (1) restricts disclosure of personally identifiable records, (2) grants individuals increased rights of access to records maintained on themselves, and (3) grants individuals the right to seek amendment of agency records maintained on themselves upon showing that the records are not accurate, relevant, timely or complete.

To be subject to the Act, personal information must be part of a system of records from which data is retrieved by an individual's name or other individual identifier, such as a social security number. Each agency that maintains such a system of records is required to publish in the Federal Register, upon establishment or revision, a notice of the existence and a description of the system.

(A)

The OIG systems of records subject to the Act generally include various employee records, investigative files and indices, and computerized management information. The OIG systems notices are available online in the 1995 Privacy Act Issuances Compilation at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs) pp. 299-311. Updates are published in the Federal Register 62 FR 61207 and 61262. The most recent printed compilations of the OIG systems notices was published in Privacy Act Issuances, 1991 Compilation, Volume 1, pp. 116-120.

## B. DEFINITIONS

1. Agency. Office of Inspector General
2. Individual. A citizen of the United States or an alien lawfully admitted for permanent residence.
3. Maintain. Maintain, collect, use, or disseminate.
4. Record. Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history, and that contains his/her name or identifying number, symbol, or other identifying particular assigned to the individual, such as Social Security Number, fingerprint, voice print, or photograph (not all inclusive).
5. System of Records. A group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.
6. Routine Use. With respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it is collected. Review the complete description of each routine use as explained in the system notice prior to any disclosure.

C. POLICY. All personal privacy information shall be handled in accordance with provisions of the Act, Office of Management and Budget (OMB) Circular A-130, OMB guidelines, and this directive.

D. EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT. The Informant and Undercover Agency Records System, the Investigative Files and Automated Investigative Indices System, the OIG Hotline Complaint Records, and the

(D)

Investigative Subsystem and the Investigative and Employee Time System of the Consolidated Assignments Personnel Tracking Administrative Information Network are exempt from certain provisions of the Act pursuant to 5 U.S.C. § 552a(j) and (k) to the extent they pertain to criminal law enforcement (7 CFR Subtitle A, 1.122) and 62 FR 61207 and 61267. However, no system of records is exempt from all requirements of the Act and some records created or maintained by OIG are not necessarily exempt under (j)(2) but may be exempt under (d)(5), (k)(2), or (k)(5). For specific information on exemptions, refer to the Act itself, contact either your supervisor, the Chief Counsel to the IG, or the Chief, Policy Development and Information Branch (PD&IB).

#### E. PROCEDURE

The following information on collection, maintenance, and handling of requests applies to records which are covered by the Act.

##### 1. All Employees

###### a. Collecting Information

(1) General. Obtain only that personal privacy information necessary for management, audit or investigative purposes. Consider the need for this information in view of its relevance to the matter in question and, if for investigative purposes, the action that may result from the investigation.

(2) Firsthand Information Preferred. When this information could result in an adverse determination concerning an individual's rights, benefits, or privileges under a Federal program, obtain the personal information directly from the individual, to the extent practicable. If this is a criminal investigation, follow appropriate investigative procedures.

(3) Privacy Act Notice. Unless exempt from the Act, 5 U.S.C. § 552a(e)(3), agencies are required to display the Privacy Act Notice (exhibit A) on the forms used to collect information or on a separate form that can be retained by the individual. The following information should be included:

(a) the authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(b) the principal purpose or purposes for which the information is intended to be used;

(E1a(3))

(c) the routine uses which may be made of the information, as published;  
and

(d) the effects on him/her, if any, of not providing all or any part of the requested information.

Individuals who are subjects or witnesses in non-criminal investigations may be informed if the investigative files may be retrieved from one of OIG's systems of records using their name(s). Persons being asked for this information in the context of a criminal investigation are not entitled to this notice pursuant to 5 U.S.C. § 552a(j)(2). In the context of an audit, a Privacy Act Notice is not necessary because an audit report is not retrieved from a system of records by a personal identifier. Any questions on this should be directed to the Chief Counsel to the IG or the Chief, PD&IB.

After providing the Notice, ensure that the individual understands his/her rights under the Act and that this individual can make an informed decision about providing the requested information. If for any reason the subject is unable to read and understand the Notice, read it aloud. Record in your notes that you read the Notice to the individual.

It is not necessary to provide the Notice when information is obtained from a firm, organization, or public entity.

b. Maintaining and Destroying Information. When you have custody of personal privacy information, handle as follows.

(1) Discuss personal privacy information only with those within OIG who have a need to know to perform their official duties or as may be necessary to complete the OIG inquiry.

(2) Keep records in locked cabinets or other secure storage during nonduty hours and when not in use during duty hours.

(3) Records should be destroyed by shredding based on the appropriate records retention schedule.

c. Responding to Requests for Disclosure of Records. Refer requests for disclosure of records to your supervisor for handling in accordance with E2 and E3 of this directive.

(E1)

d. Responding to Requests for Amendment of Records. Refer requests for amendment of records through your supervisor, to the AIG/PD&RM, with a copy to the Chief Counsel to the IG.

e. Release of Agency Documents or Information to Private Counsel or Other Person. No employee n

(1) Release of such documents or information is authorized by law;  
and

(2) in the context of litigation in which the government attorney is a party, the OIG Legal Staff or other attorney representing the government has authorized release of the documents or information to the employee's counsel or other specified person.

## 2. AIG

a. Requests for Amendment. Refer requests for amendment to the AIG/PD&RM, with a copy to the Chief Counsel to the IG.

b. Requests for Disclosure of Documents Covered as Routine Uses. Respond to requests for Records Control Center disclosure that meet the criteria for routine uses as identified in the OIG system notice. Follow the procedures provided in E3 below when making disclosures.

c. Documentation of Disclosures. 5 U.S.C. § 552a(c) requires documentation of the disclosure of records made as routine uses or for other purposes except for disclosures made to USDA officers and employees who have an official need for the record in the performance of their official duties, and for disclosures required under the Freedom of Information Act. The accounting documentation must include the date, nature, and purpose of the disclosure and the name and address of the recipient of the information.

You may use a standard transmittal letter or memorandum to document the disclosure if it includes all the required information identified above. Exhibit B provides a sample letter.

Electronic record format may also be used in lieu of the sample letter as long as the required information is captured.

The accounting disclosure record (hard copy or electronic) must be retained for 5 years or the life of the record, whichever is longer. The hard copy should be retained with the record whenever feasible.

(E2)

d. Non-Routine Use Requests. Refer all requests for disclosure that do not meet the criteria for routine use to the D/IMD.

e. Proposed System Changes. Notify the D/IMD of any proposed changes to existing Privacy Act systems of records or the proposed development of any new systems which may be subject to the Act. Include a description of and justification for the changes to the new system.

NOTE: Significant changes and new systems must be approved by OMB and Congress and published in the Federal Register before they are put into effect.

3. AIG/PD&RM

a. Responding to Requests for First Party Access. See 7 C.F.R. §§. 1.110-.123. Requests and appeals should be acknowledged within 10 working days of receipt and indicate whether or not access will be granted. When access is to be granted, access should be provided within 30 days of receipt of the request/appeal. If the deadline cannot be met, the agency shall inform the requester of the fact, the reasons for the inability to do so, and an estimate of the date on which access will be granted.

b. Disclosure of records.

(1) Conditions of Disclosures - 5 U.S.C. § 552a(b) states that no agency shall disclose any record which is contained in a system of records except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless disclosure meets certain established criteria. The established criteria are enumerated in the Act.

(2) No employee may provide official agency records or information (including Privacy Act system records) to private counsel or any other person unless:

(a) Release of such records or information is authorized by law; and

(b) in the context of litigation in which the government is a party, the OIG Legal Staff or any other attorney representing the Government has authorized release of the records or information to the employee's counsel or representative.

(3) Prior to or when making any disclosure, OIG employees should:

(E3b(3))

(a) Ensure that the records are accurate, complete, timely, and relevant for agency purposes; and

(b) disclose only that portion of the file pertaining to the named individual.

NOTE: Although the regulations at 7 C.F.R. § 1.115 require that a determination be made as to whether information contained in a requester's medical record might have an "adverse effect" on the requester and if so, suggest that the contents be reviewed by and discussed with someone of the requester's choice, this direction should NOT be followed because the courts have found this to be in violation of the Privacy Act. Agencies are ultimately obligated to disclose requested records to first parties in accordance with paragraphs (a) and (b) above.

c. Documentation for Disclosures. Maintain documentation of the disclosure as provided in E2c.

d. Responding to Requests for Amendment of Records. Upon request of a named individual to amend his/her record, acknowledge receipt of the request within 10 working days, notify the cognizant AIG, and promptly, either:

(1) Correct any portion thereof that the individual believes is not accurate, relevant, timely, or complete; or inform the individual that OIG refuses to amend the record, the reason for refusal, and procedures for appealing that decision;

(2) if any OIG record is amended in response to such a request, inform all recipients of the OIG record. If OIG receives such an amendment from another agency, amend the OIG copy of that agency's record and inform any other USDA agency to which OIG distributed the information.

e. Appeals. Compile and provide to the IG all materials necessary for making a decision on an appeal; take whatever action is necessary to carry out that decision.

f. Changes to Systems of Records. Review proposals to change existing systems of records or to develop new systems to ensure they comply with the Act's requirements. Prepare proposals in the format prescribed by the Federal Register and route them for formal clearance and approval prior to publication in the Federal Register. Include special reports to OMB and Congress, if appropriate.

g. Annual Review of Systems Notices. Review each system of records notice annually to ensure that it accurately described each particular system. Where minor changes are needed, e.g., the name or title of the system manager, ensure that an amended notice is published in the Federal Register.

(E3)

h. Biennial Privacy Act Report. Compile statistics by calendar year on Privacy Act activities. Upon request, furnish this compilation to the Department's Privacy Act Officer for consolidation with other agency submissions as part of USDA's biennial Privacy Act Report to OMB.

4. IG

a. Appeals. The IG (1) makes a decision on each appeal within 30 working days or (2) for good cause shown, notifies the requester, and gives an estimate of when a decision will be made.

b. Favorable Appeal Decision. If the appeal is granted, the IG:

- (1) Has the record amended;
- (2) so informs the requester, enclosing a copy of the amended record; and
- (3) provides the amended record to those parties who had received the original record.

c. Adverse Appeal Decision. If the appeal is denied, the IG informs the requester of the following:

- (1) The decision and the reason therefore;
- (2) the requester's right to file a concise statement of disagreement and procedures to follow;
- (3) the requester's right to seek judicial review of the adverse decision, in accordance with 5 U.S.C. § 552a(g)(1);
- (4) that the statement of disagreement will be made available to anyone to whom the record (report) is subsequently disclosed (where deemed appropriate, along with an OIG statement showing why it did not amend the record); and
- (5) that prior recipients of the record will be provided the information.

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**NOTICE PURSUANT TO THE PRIVACY ACT OF 1974 FOR  
INVESTIGATIVE FILES AND AUTOMATED INVESTIGATIVE  
INDICES SYSTEM, OFFICE OF INSPECTOR GENERAL,  
U.S. DEPARTMENT OF AGRICULTURE**

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The Privacy Act of 1974 (5 U.S.C. § 552a(e)(3)) requires the Office of Inspector General (OIG), U.S. Department of Agriculture (USDA), to provide you with the following information in connection with an official inquiry. You are asked to furnish personal information about yourself to be included in an OIG report.

**AUTHORITY FOR COLLECTION OF INFORMATION:** Pursuant to the authority contained in the Inspector General Act of 1978, as amended (codified at 5 U.S.C. Appendix 3) and USDA regulations setting out the Secretary's delegation to the Inspector General (7 CFR 2.33), the Inspector General, USDA is authorized to organize, direct, and manage the Office of Inspector General, in conducting audits and investigations, including the creation and the maintenance of any necessary records.

**PURPOSE FOR COLLECTING INFORMATION:** Information is collected for the purpose of evaluating program operations or to confirm or refute allegations of violations or irregularities in USDA programs or operations or by USDA personnel. The information may support legal action and may be used by USDA for administrative enforcement purposes.

**ROUTINE USES:** The collected information will be used for the purposes set forth above and may be disclosed as set forth in the routine uses listed on the back of this notice.

**MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION:** Disclosing your social security number is voluntary. USDA employees may be subject to adverse actions for failure to disclose information relating to official responsibilities. Persons other than USDA employees are not subject to adverse action for refusal to provide information, except to the extent disclosure is required by law or regulations.

A copy of this Privacy Act Statement will be provided to you at your request.

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## ROUTINE USES FOR INVESTIGATIONS SYSTEMS OF RECORDS

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1. A record from the system of records which indicates either by itself or in combination with other information, a violation or potential violation of a contract or of law, whether civil, criminal, or regulatory, or which otherwise reflects on the qualifications or fitness of a licensed (or seeking to be licensed) individual, may be disclosed to a Federal, State, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), or other public authority that investigates or prosecutes or assists in such investigation, prosecution enforcement, implementation, or issuance of the statute, rules, regulation, order, or license.
2. A record from the system of records may be disclosed to a Federal, State, local, or foreign agency, other public authority, consumer reporting agency, or professional organization maintaining civil, criminal, or other relevant enforcement or other pertinent records, such as current licenses, in order to obtain information relevant to an OIG decision concerning employee retention or other personnel action, issuance of a security clearance, letting of a contract or other procurement action, issuance of a benefit, establishment of a claim, collection of a delinquent debt, or initiation of an administrative, civil, or criminal action.
3. A record from the system of records may be disclosed to a Federal, State, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), or other public authority, to the extent the information is relevant and necessary to the requestor's hiring or retention of an individual or any other personnel action, issuance or revocation of a security clearance, license, grant, or other benefit, establishment of a claim, letting of a contract, reporting of an investigation of an individual, for purposes of a suspension or debarment action, or the initiation of administrative, civil or criminal action.
4. A record from the system of records may be disclosed to any source -- private or public -- to the extent necessary to secure from such source information relevant to a legitimate OIG investigation, audit, or other inquiry.
5. A record from the system of records may be disclosed to the Department of Justice in the course of litigation when the use of such records by the Department of Justice is deemed relevant and necessary to the litigation and may be disclosed in a proceeding before a court, adjudicative body, or administrative tribunal, or in the course of civil discovery, litigation, or settlement negotiations, when a part to a legal action or an entity or individual having an interest in the litigation includes any of the following:
  - (a) The OIG or any component thereof;
  - (b) any employee of the OIG in his or her official capacity;
  - (c) any employee of the OIG in his or her individual capacity where the Department of Justice has agreed to represent the employee; or
  - (d) the United States, where the OIG determines that litigation is likely to affect USDA or any of its components.
6. A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. In such cases, however, the Member's right to a record is no greater than that of the individual.
7. A record from the system of records may be disclosed to the Department of Justice for the purpose of obtaining its advice on an OIG audit, investigation, or other inquiry, including Freedom of Information or Privacy Act matters.
8. A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding OIG obligations under the Privacy Act or in connection with the review of private relief legislation.
9. A record from the system of records may be disclosed to a private firm with which OIG contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

10. A record from the system of records may be disclosed in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies if the OIG determines that: (a) the records are both relevant and necessary to the proceeding, and (b) such release is compatible with the purpose for which the records were collected.
11. A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, provided that the grand jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such requests by the Attorney General, and that the U.S. Attorney actually signs the letter specifying both the information sought and the law enforcement purpose served. In the case of a State grand jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted.
12. A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayment owed to any agency and its components.
13. Relevant information from a system of records may be disclosed to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of fugitives, to provide notification of arrests, where necessary for the protection from imminent threat of life or property, or in accordance with guidelines set out by the Department of Justice in 28 CFR 50.2.

SAMPLE LETTER

ACCOUNTING FOR A ROUTINE USE DISCLOSURE UNDER  
THE PRIVACY ACT OF 1974

(Date)

Mr. John Doe  
Assistant U.S. Attorney  
800 Legal Street  
Washington, D.C. 20009

Dear Mr. Doe:

In response to your request of   (date)  , enclosed is information which is subject to the Privacy Act of 1974. This letter will be used to document our disclosure of  (insert case file name and nature of information disclosed)  under routine use  (insert routine use number) . Please be advised that this information is being provided only for the use stated above and is not to be duplicated or distributed outside of your office.

If you have any questions concerning this disclosure, please contact  (insert name and telephone number) . Please refer to the Office of Inspector General case number  (insert case number)  during any consultation concerning this disclosure.

Sincerely,

 (Name)   
Assistant Inspector General  
for Investigations

Enclosure